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SUBJECT: SENATE LAYS GROUND FOR BERLUSCONI'S TRIAL-FREE EU PRESIDENCY

REF: A) ROME 2495 B) ROME 2284 C) ROME 1971

1. (SBU) SUMMARY: Before Italy assumes the EU Presidency on July 1, the Italian Parliament is virtually guaranteed to pass legislation suspending trials against the country's top five institutional leaders, likely quashing the possibility of embarrassing corruption hearings against Prime Minister Berlusconi during the six-month Presidency, and indeed for the duration of his term. The GOI is also seeking limited parliamentary immunity in the same legislation, utilizing a previously-introduced bill implementing the Constitution, rather than a constitutional amendment. The legislation passed the Senate handily on June 5, and passage by the Chamber of Deputies and full effectiveness are expected before the end of June. END SUMMARY.

2. (U) On June 5, the Senate passed a bill which would provide for the suspension of trials against the country's top five institutional leaders (the Presidents of the Republic, the Constitutional Court, the Senate, and the Chamber, and the Prime Minister) during their terms of office. The law would not provide total immunity for the named positions. The President of the Republic could still be accused and tried by Parliament for high treason and attacks on the Constitution, as foreseen in Article 90 of the Constitution. Likewise, the Prime Minister could be tried, with Parliamentary approval, for offenses committed in exercising his role, according to Article 96. The officials would also be subject to investigation, but trials could not begin until the person leaves office. The statute of limitations clock stops for the duration of the individual's term. (COMMENT: In a tactical maneuver which probably adds to opposition wrath, the governing coalition took to calling this part of the legislation the "Lodo Maccanico." "Lodo" implies an uncontroversial agreement, and "Maccanico" is the name of a respected center-left Senator who last year proposed similar legislation. END COMMENT.)

3. (U) The same legislation seeks to expand parliamentary immunity. Prior to the 1990's "Tangentopoli" ("Bribesgate") corruption scandal, Article 68 of the Constitution guaranteed full immunity to parliamentarians during their terms of office. In 1993, after the uproar created when Parliament rejected the magistracy's request to investigate former Prime Minister Bettino Craxi, Article 68 was revised to permit investigations and prosecution without previous parliamentary authorization. (Arrest, wiretaps, or search still require parliamentary approval.) The present bill would reinstate immunity from investigation and prosecution related to all parliamentary-related activities. (Currently, only votes and opinions are protected.) Magistrates would also need parliamentary permission to use information from a wiretap if a parliamentarian were one of the speakers, even if s/he was not the focus of the investigation. (COMMENT: In another galling (for the opposition) irony, the legislative proposal was appended to a bill introduced by Greens Deputy Marco Boato, who sought to restrict judicial phone taps of legislators. Boato, needless to say, has demanded that his name be removed from the legislation. END COMMENT.)

4. (U) The legislation is drafted as a law to implement the Constitution, not as a constitutional amendment. An amendment would require two readings, three months apart, in each house, and probably a referendum as well, likely about a year-long process. This appears to be a precedent-setting approach, although the erstwhile "Boato Law" would have relied on the same technique. It now goes to the Chamber of Deputies, where it is expected to pass on June 20-21. It will take full effect the day after it is signed by the President of the Republic and published in the official gazette, normally the day after final passage. As planned, this would be well in time for the beginning of the EU presidency, even allowing about a week for the dust to settle.

5. (SBU) The opposition is divided on this issue. The more centrist Union of Democrats of Europe (UDEUR) and

Italian Democratic Socialists (SDI) abstained on the Senate vote (a tacit sign of support) and can be expected to do the same in the Chamber, while the further left parties have indicated they will present a referendum to abolish the law. (If they succeed, the referendum could not be held before Spring of 2004.) The opposition charges (correctly) that the bill seeks to freeze the on-going judicial bribery trial against Prime Minister Berlusconi (Ref B). The center-right counters it is needed to

safeguard the institutional figure of the Prime Minister in light of Italy's impending EU presidency. Some in the opposition have charged that the legislation is unconstitutional because it provides separate treatment for the five high-level institutional figures. President Ciampi has weighed in, calling on all to tone down their rhetoric, which makes Italy look bad in the run-up to the EU presidency. It seems clear the GOI has received Ciampi's green light (explicitly or implicitly) that the legislation passes constitutional muster in his eyes. Meanwhile, the center-right has also presented a draft constitutional amendment, mirroring that passed recently by the EU Parliament (with the support of center-left Euro Parliamentarians).

16. (SBU) COMMENT: Given the Government's majority, it is safe to say the legislation will pass prior to the beginning of the Italian EU Presidency. This should rid the Prime Minister of the worry of corruption hearings in the midst of the Presidency, and indeed for the remainder of his term. The only wrinkle is that the same Milan court accused by Berlusconi and his supporters of politicized justice (Refs B and C) has the right to request a Constitutional Court review of the legislation when it passes. Although Italian justice is known for grinding exceptionally slowly, we cannot rule out lightning action by the Constitutional Court. END COMMENT.  
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